

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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**Ex parte** CHARLES S. VANN

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Appeal No. 2001-0372  
Application 08/928,242

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ON BRIEF

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Before JERRY SMITH, FLEMING, and GROSS, **Administrative Patent Judges**.

FLEMING, **Administrative Patent Judge**.

**DECISION ON APPEAL**

This is a decision on appeal from the final rejection of claims 1 through 20, all the claims pending in the application. On page 2 of the Examiner's answer, the Examiner states upon reconsideration that claims 4 through 8 are now only objected to for depending on rejected claims and would otherwise be allowable. Also, the Examiner notes that claims 14

through 16 are now allowable. Therefore, we only have claims 1 through 3, 9 through 13 and 17 through 20 before us for our consideration.

The invention relates to detecting the location of a target relative to the position of a tracking device.

Claim 1 is reproduced as follows:

1. A laser tracker for detecting a retroreflective target on an object, comprising:

a laser which produces an output beam;

a linear polarizer tilted at an angle with respect to the laser beam which passes a beam having a first linear polarization;

a quarter wave plate positioned after the polarizer which passes the beam and converts the beam to a circular polarization;

a retroreflector affixed to a target;

a scanning optical system for directing the circularly polarized beam into a field of view wherein the beam will illuminate said retroreflective target which is present in the field of view, thereby producing a reflected beam which is directed back to the quarter wave plate which converts the beam to a beam having a second linear polarization orthogonal to the first linear polarization, and then to the linear polarizer which reflects the beam;

a photodetector positioned to receive the reflected beam which is also focused onto the detector by the optical system, and producing a detector signal;

a signal processing system connected to the detector to obtain information about the target from the detector signal.

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The references relied on by the Examiner are as follows:

Scott	3,604,805	Sept. 14, 1971
Keene	4,311,384	Jan. 19, 1982
Endo	4,632,543	Dec. 30, 1986
Gallivan	5,348,249	Sept. 20, 1994

Claims 1 through 3, 9, 10, 12 and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Endo and Keene.

Claims 11, 13 and 18 through 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Endo and Keene and further in view of Gallivan.

Rather than repeat the arguments of Appellant or Examiner, we make reference to the brief and answer for the respective details thereof.

#### **OPINION**

After a careful review of the evidence and arguments before us, we agree with the Examiner that claims 1 through 3, 9, 10, 12 and 17 are properly rejected under 35 U.S.C. § 103. Thus, we will sustain the rejection of these claims but we will reverse the rejection of the remaining claims on appeal for the reasons set forth **infra**.

At the outset, we note that Appellant has indicated on page 4 of the brief that the claims do not stand or fall together. However, on pages 5 and 6 of the brief, we note that Appellant

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does not argue claims 1 through 3, 9, 10, 12 and 17 separately but rather argues them as a group.

37 CFR § 1.192 (c)(7) (July 1, 1998) **as amended at** 62 Fed. Reg. 53196 (October 10, 1997), which was controlling at the time of Appellant's filing the brief, states:

For each ground of rejection which Appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, Appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

Since Appellant has not made separate arguments to each claim but argues the claims as a group, we hold that claims 1 through 3, 9, 10, 12 and 17 stand or fall together and we will select claim 1 as the representative claim for that group.

On pages 5 and 6 of the brief, Appellant argues that Endo uses a totally different approach than claimed by Appellant for measuring the range between the radar system and the car ahead.

Appellant argues that Endo uses the approach of time of flight measurement using a pulse laser beam where Appellant's invention measures the amount of energy returned.

As pointed out by our reviewing court, we must first determine the scope of the claim. "[T]he name of the game is the claim." *In re Hiniker Co.*, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998).

Upon our review of claim 1, we fail to find that the claim precludes reading on Endo's optical radar system. We fail to find that there is any limitation recited in the claim that is directed to detecting the amount of energy returned. Therefore, we find that the Examiner reasonably interpreted the claim to read on the Endo system.

Appellant further argues that the claim is distinguished from the Endo reference because it recites a retroreflective target. Appellant further admits that retroreflective targets are known in the art. See page 6 of the brief.

We note that the Examiner does not contend that Endo teaches a retroreflective target. However, the Examiner does argue that retroreflective targets are known, which is not disputed by the Appellant. The Examiner further argues that it would have been obvious to use the known retroreflective targets with the Endo

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optical radar system. Appellant has not disputed or argued that it would not have been obvious to use the known retroreflective targets in the Endo system, nor has Appellant pointed to any error made by the Examiner in making this rejection.

Appellant has not made any other arguments as to claims 1 through 3, 9, 10, 12 and 17. 37 CFR § 1.192(a) states:

Appellant must, within two months from the date of the notice of appeal under § 1.191 or within the time allowed for reply to the action from which the appeal was taken, if such time is later, file a brief in triplicate. The brief must be accompanied by the fee set forth in § 1.17(c) and must set forth the authorities and arguments on which Appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown.

Thus, 37 CFR § 1.192 provides that only the arguments made by Appellant in the brief will be considered and that failure to make an argument constitutes a waiver on that particular point. Support for this rule has been demonstrated by our reviewing court in *In re Berger*, 279 F.3d 975, 984, 61 USPQ2d 1523, 1528-29 (Fed. Cir. 2002), wherein the Federal Circuit Court stated that because the Appellant did not contest the merits of the rejection in his brief to the Federal Circuit court, the issue was waived.

Turning to the rejection of claims 11, 13 and 18 through 20 as being unpatentable under 35 U.S.C. § 103 over Endo and Keene

and further in view of Gallivan, Appellant argues that Gallivan fails to teach the claimed limitation of having a reflective target in which it is an optical bar code target. Appellant argues that the Examiner improperly read the the Gallivan bars 37 encoded onto ball lens 36 as an optical bar code target. Appellant argues that the term "bar code" is particularly defined in the Appellant's application on page 11, lines 23 through 25. There, it is stated that bar code 35 as shown in figure 5 consists of reflective bars 37a arranged in the form of digital codes on one side of the ball lens 33. Appellant argues that a bar code is where each bar can vary in width, encoding information in the non-symmetry of the bar pattern. In the case of Gallivan's bar lens 37, the bars are symmetrical with no attempt to encode information in the non-symmetry of the pattern.

An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. "In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and arguments." ***In re Oetiker***, 977 F.2d at 1445, 24 USPQ2d at 1444. "[T]he Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which

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the findings are deemed to support the agency's conclusion."

***In re Lee***, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

Upon our review of Gallivan, we fail to find that the Gallivan bars 37 encoded onto ball lens 36 can be fairly read on Appellant's claimed bar code target. Therefore, we will not sustain the Examiner's rejection of claims 11, 13 and 18 through 20.

In view of the foregoing, the decision of the Examiner rejecting claims 1 through 3, 9, 10, 12 and 17 under 35 U.S.C. § 103 is affirmed; however, the decision of the Examiner rejecting claims 11, 13 and 18 through 20 under 35 U.S.C. § 103 is reversed.



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No time period for taking any subsequent action in  
connection with this appeal may be extended under 37 CFR  
§ 1.136(a).

***AFFIRMED-IN-PART***

JERRY SMITH	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
MICHAEL R. FLEMING	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
ANITA PELLMAN GROSS	)	
Administrative Patent Judge	)	

MRF:pgg

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